IN THE HIGH COURT OF DELHI AT NEW DELHI

CM (M) No. 1232/2007

Judgment delivered on: September 10 ,2007

Shri Moinuddin
S/o Shri Nizamuddin,
R/o 1173 to 1184
Gali Samosan, Farash Khana
Delhi ..... Petitioner

Through: Mr. S.D. Ansari for the petitioner.

versus

Shri Parvez
S/o Shri Mansoor Ahmed
R/o 217-18, Gali Kandle Kashan
Fatehpuri,
Delhi ..... Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.

Counsel for the petitioner contends that vide order dated 17.5.2007, the learned Trial Court in the presence of counsel for the defendant had passed the restraint order thereby restraining the respondent/defendant not to dispossess the plaintiff without due process of law from the suit property. Thereafter, the present petitioner had moved an application under Section 151 CPC seeking directions to the SHO, PS Lahori Gate for ensuring the implementation of the Court order dated 17.05.2007. The said application of the petitioner had been dismissed by the impugned order dated 13.8.2007. Aggrieved with the said order, the present petition has been preferred. Counsel for the petitioner contends that once the plaintiff/petitioner was given protection by the said order then the said order was required to be enforced by the Court. The contention of counsel for the petitioner is that the enforcement of the said order could not have been denied by the Court by simply saying that it was merely a preliminary order and no order on merits on the application under Order 39 Rule 1 and 2

CPC have yet been passed by the Court. Counsel for the petitioner has placed reliance on the judgment reported in *AIR 1971 Andhra Pradesh 53,* **Rayapati Audemma Vs. Pothineni Narasimham** to contend that Order 39 Rule 2(A) CPC only provides for punishment and as far as enforcement of the order is concerned, the Court is well within its powers to give necessary directions on the application moved under Section 151 CPC invoking inherent powers of the Court. The proposition of law as settled in the said judgment cannot be disputed that the enforcement of the order passed by the Court can be sought by any of the parties by moving an application under Section 151 CPC invoking the inherent powers of the Court. However, a bare perusal of the application filed by the petitioner under Section 151 CPC seeking the said enforcement of the order evidently shows that there are no specific averments made by the petitioner seeking such enforcement of the order with the help of the local police. Para 3 and 4 of the application are reproduced as under:-

> "3. That the defendant is strong head persons and are not caring for the said orders and are

> making attempts to dispossess the plaintiff in violation of the court orders aforesaid. They threaten to even assault the plaintiff.
>
> 4. That unless and unless police is not directed to get the said orders implemented and are not ensured to be complied with by the defendant, the defendant is not likely to desist from heir illegal activities and they will put his threats into action. The plaintiff gone to the concerned police and apprised about the order, but they said that till there are no specific direction, they will not do anything."

The aforesaid averments would clearly show that they are quite general in nature and no specific instances have been disclosed in the said averments warranting such an order in favour of the petitioner. The parties seeking police assistance for enforcement of an order passed by the Civil Court must disclose strong reasons and exceptional circumstances for the Court to pass such an order. In the absence of grave and imminent circumstances grant of any such order has the propensity and vulnerability of being misused, therefore, Court has to be very cautious giving any such directions of granting police assistance to enforce such orders when passed by a Civil Court.

In the light of the aforesaid discussion, the matter is sent back to the learned trial court for re-consideration of the said

application at the time of disposal of application of the petitioner under Order 39 Rule 1 and 2 CPC. The Trial Court is also directed to endeavour to hear the application of the petitioner under Order 39 Rule 1 and 2 CPC and application of the petitioner under Section 151 CPC, as expeditiously as possible.

In view of the above discussion, the impugned order is set aside.

With these directions, the petition is disposed of. DASTI.

September 10, 2007 **KAILASH GAMBHIR**
ga **JUDGE**